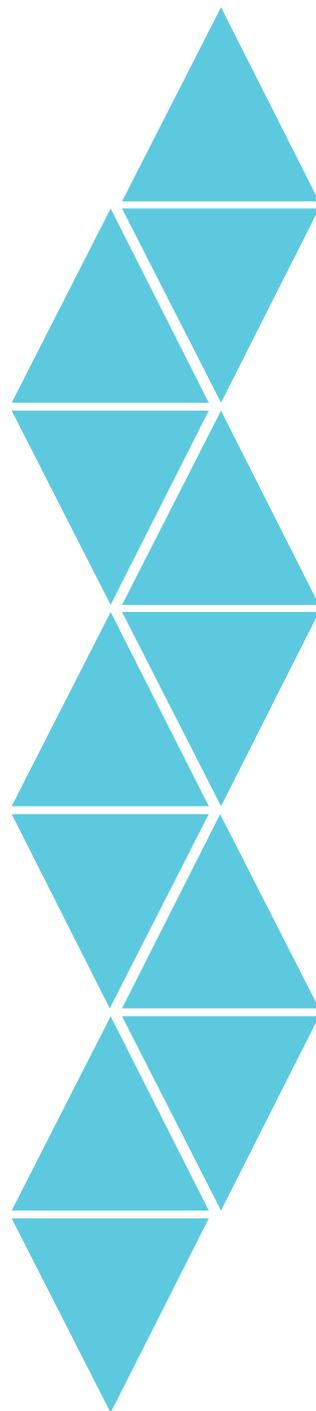
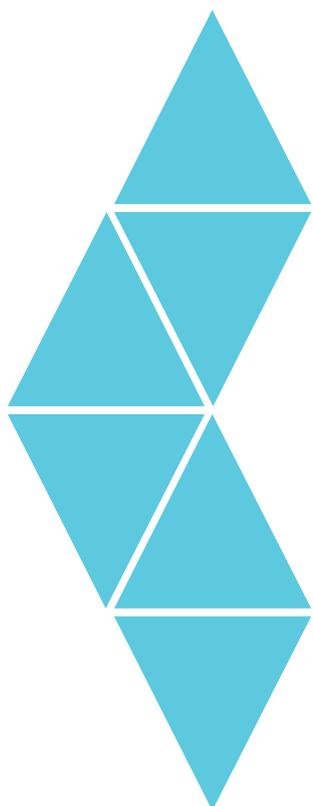


UNMARRIED COHABITATION



JURK

juridisk rådgivning for kvinner

FOREWORD

This brochure is published by Legal Advice for Women (JURK). JURK is an independent legal organization run by law students. JURK provides free legal assistance to women and to those who identify as women.

Reservation is made in case of changes in regulations after publication.

Our thanks for all the helpful input from colleagues in JURK.

Oslo, September 2020

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JURK (Legal Advice for Women) provides free legal assistance to women and to those who identify as women. Visit our website for more information about JURK: www.jurk.no.

You can also call us on our phone number 22 84 29 50. Our address is Skippergata 23, 0154 Oslo.

You can send your case to us electronically on our website: www.jurk.no → “Send oss din sak!”

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1.0 INTRODUCTION

1.1 The aim of the brochure

More and more couples choose to live as cohabitants instead of getting married. Many people believe that the rules which apply for spouses also apply for cohabitants who have lived together for two years or more. This is not the case.

This brochure gives a brief overview of legal and practical issues that are relevant during the cohabitation and when the cohabitation ends.

2.0 RIGHTS AND RESPONSIBILITIES DURING COHABITATION

2.1 Cohabitation agreement

There is no law that directly regulates the financial relationship between cohabitants. Therefore, it is important that the cohabitants enter into a cohabitation agreement.

A cohabitation agreement should clarify everything about ownership, liability for debts, obligations towards each other and how the financial settlement is to take place in the event of a breakup of a cohabitation. By entering into a cohabitation agreement, the cohabitants can prevent conflicts.

If one of the cohabitants is a stay-at-home parent, while the other is at work, and they have mutual children, they should agree on how he or she will receive compensation for their efforts in the event of a breakup of the cohabitation. The same applies if one of the cohabitants pays the consumption expenditure while the other invests in lasting values.

2.2 Ownership and right of disposition

In principle, entering into a cohabitation does not involve any changes in what each of the cohabitants owns. What each of the cohabitants owned before they moved together, each of them still owns. The same applies as a general rule to what they buy, inherit or receive as a gift during the cohabitation. However, the parties may become co-owners of objects during the cohabitation.

What each of the cohabitants owns, can have significance in several contexts. Firstly, the ownership is of importance for the cohabitants' disposal of the assets. In addition, it can have an impact on the financial division when the cohabitation ends.

The ownership can be of particular importance to creditors. It is therefore important that the cohabitants register the ownership, so that creditors are prevented from taking legal possession of assets other than those that actually belong to the debtor. For more information about how to secure your rights, see section 2.3.4.

Sole ownership

As mentioned, everything a cohabitant brings into the cohabitation, and what he or she later buys, inherits or receives, will in principle be this cohabitant's sole property. This means that he or she owns it alone.

Joint ownership

Joint ownership means that two or more people own something together with an ideal share each. A joint ownership between cohabitants can, for example, be established by purchase, agreement or by the parties receiving a gift jointly. If a joint ownership exists, section 2 of Sameieloven (the Norwegian Joint Ownership Act) states that the co-owners each own an equal share, unless otherwise agreed or stated in another way.

Right of disposition

Assets in sole property are at the owner's free disposal. If one cohabitant owns the shared residence alone, he or she is free to, for example, ask the other cohabitant to move. The owner is also free to mortgage and sell the house.

If an asset is co-owned, both co-owners can normally use the asset. What the co-owners can do with the asset, can be stipulated in the agreement between them. If nothing is agreed on, either explicitly or tacitly, the rules of Sameieloven (the Norwegian Joint Ownership Act) apply.

Sameieloven states that the co-owned asset can be used for the purpose for which it was acquired, and in its usual way. Expenses for necessary maintenance are divided according to how large a share each of the co-owners has.

The co-owners can, at any time, sell or mortgage all, or part, of their share of the co-owned property, unless otherwise agreed or assumed.

2.3 Determination of ownership

2.3.1 Agreement

Cohabitants can agree on who will own what and with how large a share. If one of the cohabitants owns a residence alone, the parties can agree that the other cohabitant shall become a co-owner. Such an agreement may be made orally or in writing. However, for evidentiary reasons, such an agreement should be made in writing.

For more information about cohabitation agreements, see section 2.1.

It is the real ownership that is decisive, and not who is registered in the Land Registry (grunnboken) or other registers.

2.3.2 Acquisition

If the cohabitants have not agreed on who will own an asset, the person or persons who *acquired* the asset is considered the owner.

There are several ways to acquire an asset. The most common ways are by purchase, gift or inheritance. For example, if the cohabitants have bought a residence together, and both have paid for it, they have acquired this property together. The residence will be in joint ownership between them. If only one of the cohabitants has bought the residence, it

will usually be considered to belong to this cohabitant alone, unless otherwise agreed.

If the cohabitants have agreed that one of them shall pay rent for living in the other cohabitant's residence, this normally will not be considered a contribution to the acquisition.

2.3.3 Joint ownership as a result of efforts during cohabitation

Joint ownership can also be established as a result of efforts during the cohabitation. There are two conditions that must be met for a cohabitant to become a co-owner of an asset as a result of effort during the cohabitation.

1. Direct or indirect contributions

The first condition is that the cohabitant must have made a direct or indirect contribution to the acquisition. Direct contributions can be equity or payment of loans, etc. Indirect contributions will typically be housework and payment of consumption expenditure.

In order to become a co-owner based on indirect contributions, the cohabitant must have enabled the other cohabitant's time and capital, by taking more than their share of the consumption expenditure or housework.

2. Joint project

The second condition is that the acquisition of the asset must have been a joint project for the cohabitants. This means that the asset must have been intended for joint personal use and that there must have been a certain level of agreement when acquiring the asset.

It takes a lot to become a co-owner of a residence that one cohabitant owned before the cohabitation, unless the cohabitants make an agreement on the ownership.

If a cohabitant believes that he or she has become a co-owner of an asset as a result of effort during the cohabitation, he or she must take the matter to court if the cohabitants cannot agree on the ownership.

A specific assessment must be made in each individual case whether a cohabitant has become a co-owner.

2.3.4 Securing a share of a joint ownership

Registration of real estate

«Tinglysing» is a form of registration of various dispositions. All documents expressing rights to real estate can be registered in the Public Land Registry (grunnboken). This register shows who is the legal owner of a property at any given time, and which rights, obligations or mortgages are registered (tinglyst) on the property. The information in the Land Registry (grunnboken) is available to everyone.

In order to prevent one co-owner from making dispositions in excess of his share of the asset, the other co-owner can register their right. Upon registration, the joint ownership share will be visible to others. This can be, for example, a buyer or a mortgagee. You can read more about this at www.kartverket.no.

Example:

Lars and Kari are cohabitants. They buy a house together. Kari has large debts and problems paying her creditors, and she therefore wants to sell the house. However, Lars has registered his joint ownership share in the Land Registry (grunnboken), so that he is also the legal owner. Then, Kari can only sell or mortgage her share of the house. To sell or mortgage the entire house, she needs consent from Lars.

Registration of cars

Rights and liabilities on cars can be registered in the movable property register in Brønnøysund.

2.4 The cohabitants' liability for debt

A cohabitant can only incur debt with effect for themselves. A cohabitant is thus only liable for the obligations he or she incurs for themselves. If a cohabitant has a lot of debt, the creditor cannot demand that the other cohabitant pays.

External liability

It is important to distinguish between external and internal debt liability. External debt liability determines whom the creditor can demand payment from. The internal debt liability only determines how the cohabitants divide the payment among themselves.

If only one cohabitant is externally liable for the debt, the creditor cannot demand that the other cohabitant pays.

Cohabitants can take out a loan together, and in that case both will be liable to the creditor. Then the liability will often be solidary. This means that the creditor can demand that one of the cohabitants pays the full amount.

Internal liability

Cohabitants can agree that the internal liability shall be different from the external liability. Such an agreement does not have to be in writing, but it is easier to prove that you have an agreement if it is in writing.

It must be considered specifically in each individual case whether the cohabitants have an agreement that both shall be liable for the internal debt. The assessment emphasizes, among other things, the purpose of the loan, and whether the loan is for joint use.

Even if only one of the cohabitants is externally liable, the cohabitants can agree among themselves that both shall be liable for the debt. Then the cohabitant who is externally liable can demand that the other cohabitant also pays. However, the creditor can only demand payment from the person who is liable externally.

If both cohabitants are liable externally, they can agree among themselves that only one shall be liable internally. In that case, the creditor can still demand that both pay.

Claim of recourse

If one of the cohabitants pays for debt that the other cohabitant was supposed to pay, he or she may have a claim for recourse. This means that the cohabitant who has paid too much can demand that the other cohabitant pays what he

or she should have paid according to their agreement.

Example:

Lars and Kari are cohabitants. Lars has taken out a loan of NOK 100,000 from the bank. Lars is externally liable (to the bank) for the payment of this loan, but he and Kari have agreed that they will be equally liable internally, and hence will pay NOK 50,000 each.

The bank can demand that Lars pays the full amount of NOK 100,000, but cannot demand Kari to pay. Lars can still demand NOK 50,000 from Kari according to their internal agreement.

Enforcing of debt

If the loan is not repaid, the creditor can normally enforce the debt by taking legal possession of the assets belonging to the debtor. A creditor cannot normally take legal possession of assets belonging to the debtor's cohabitant.

2.5 Other matters

2.5.1 Payment of expenses

Each of the cohabitants is in principle only obliged to pay the expenses related to the things they own. The parties may nevertheless enter into an agreement on how expenses are to be distributed.

Cohabitants have no maintenance obligation by law. A duty of maintenance must therefore be agreed on or tacitly assumed.

2.5.2 Benefits from «folketrygden» (The National Insurance Scheme)

Cohabitants who have or have had children together, are given equal rights as spouses when it comes to social security benefits. Cohabitants who have previously been married to each other, are also given equal rights as spouses concerning benefits from folketrygden. A cohabitant who receives benefits from folketrygden is obliged to report to NAV about his or her cohabitation.

For more information on the social security rules, you can contact your local NAV office (Norwegian Labour and Welfare Administration). They have a duty to provide information and guidance.

2.5.3 Taxes

You can find information about the tax rules on Skatteetatens web page:

www.skatteetaten.no

2.5.4 Life Insurance

Cohabitants can appoint each other as beneficiaries to get a payout from life insurance. The appointed cohabitant will then get the payout if the other cohabitant dies or becomes disabled. Such a beneficiary can be a good alternative for the cohabitants to secure each other if one of them dies.

3.0 FINANCIAL DIVISION IN THE EVENT OF A BREAKUP OF COHABITATION

3.1 Freedom of contract

Cohabitants are free to agree on how they will distribute assets, values and debts in the event of a breakup. Such an agreement should be written. If the cohabitants have entered into a cohabitation agreement on how the financial settlement is to be carried out, either while living together or because of the breakup, this must be followed. You can read more about cohabitation agreements in section 2.1

Unreasonable agreement

If the cohabitants have an agreement concerning how the financial settlement is to take place, one cohabitant may demand it to be set aside due to unreasonableness. However, it takes a lot to set an agreement aside.

3.2 Division according to the property boundaries

As a main rule, if the cohabitants have not entered into a cohabitation agreement that states otherwise, each of them retains their own assets and their own debt in the event of a breakup.

For information on how ownership between cohabitants is determined, see section 2.3 of the brochure.

Sole ownership

As a main rule, assets that are in sole ownership are retained by the cohabitant who owns them.

Joint ownership

If the cohabitants have assets that are co-owned, the joint ownership will not automatically end in the event of a breakup of the cohabitation.

If the cohabitants do not agree on who will repossess the assets that they own together, they have two options. Each of the cohabitants can either sell their share of the asset to someone else, or demand the joint ownership to be forcibly annulled.

Until the asset of joint ownership has been sold, either by voluntary or forced annulment of the joint ownership, both co-owners have an equal right to use the asset. For example, one co-owner cannot change locks to a shared residence, to block access for the other.

3.3 Exception for the shared residence

If the cohabitants do not agree on who will take over their shared residence, one of them may have the right to take over the residence according to the rules in Husstands-felleskapsloven (the Norwegian Household Community Act). This applies even if it is the other cohabitant who owns the residence.

These rules are therefore an exception to the main rule that cohabitants retain their own assets in the event of a breakup. The cohabitant who demands to take over the residence according to these rules must take

the case to court if the cohabitants do not agree.

Whoever takes over a residence according to the rules in Husstandsfellesskapsloven, must pay out the other. The basis of the payment is the market value at the time it is decided that the cohabitant must be allowed to take over the residence. The person who takes over the residence usually gets a deadline of six months to pay.

As a general rule, four conditions must be met for a cohabitant to be able to take over the residence in accordance with the rules in the Husstandsfellesskapsloven.

1. Age

The cohabitants must be over 18 years of age.

2. Two years of cohabitation or mutual children

The cohabitants must either have lived together for at least two years, or they must have, have had or expect children together.

No special documentation or registration is normally required to prove that a household community exists. However, if there is any doubt as to whether the two-year requirement has been met, an address message to Folkeregisteret (the National Population Register) could be a factor in an assessment of evidence.

3. Shared residence

The property that the cohabitant demands to take over must "exclusively or mainly" have served as a shared residence for the cohabitants.

"Shared residence" means the cohabitants' permanent housing. It must be a residence that the cohabitants have lived in together. If only one of them has lived in the residence, the condition is not met. The condition is also not met if it is a residence that the cohabitants have rented out while they lived elsewhere, or if it is a holiday home that has not been the cohabitants' permanent housing.

For example, if the residence is connected to farming, the condition will normally not be met. This is because the property has been used for business activities, and thus has not "mainly" served as a shared residence for the cohabitants.

4. Strong reasons

The last condition is that the cohabitant must have "strong reasons" that justify him or her being allowed to take over the residence.

A cohabitant may have "strong reasons" if he or she has interests and needs for taking over the residence that outweigh the other's need to keep the residence.

It must be considered specifically in each individual case whether a cohabitant has "strong reasons". Emphasis is placed on, among other things, which parent the children will stay with and the children's needs. In addition, emphasis is placed on the cohabitants' connection to the place where the residence is located and the duration of the cohabitation.

If the residence is co-owned by the cohabitants and they do not have children, it is conceivable that neither party has strong reasons for taking over the residence. Neither of them can then demand to take over the residence according to the rules in Husstandsfelleskapsloven. They must go the way of forced annulment according to the rules in Sameieloven if they do not come to an agreement.

The right to take over a residence under Husstandsfelleskapsloven does not apply when the other party has allodial rights (odelsrett) to the property. It also does not apply when the residence has been acquired from the other cohabitant's family by inheritance or gift.

3.4 Right of use for the shared residence

Even if a cohabitant does not have strong enough reasons to be allowed to take over a residence according to Husstandsfelleskapsloven, he or she can in some cases obtain a right of use for the residence. In order to obtain a right of use for the residence in accordance with the rules in Husstandsfelleskapsloven, one must have "special reasons".

It takes less to obtain the right to use the residence than to take over the residence. If one party gets the right to use the residence, the other can demand market rent for their part of the residence.

The condition that the cohabitants must be at least 18 years old, also applies to the right of use. In addition, the cohabitation must have lasted for at least two years, or the parties must have, have had or expect children together. It is also required that it concerns a «shared residence» as mentioned in section 3.3.

A cohabitant can also obtain a right of use for a residence to which the other cohabitant has an allodial right (odelsrett) or which has been acquired from her or his family by inheritance or gift.

A right of use should be registered in the Land Registry (grunnboken). If the right of use is not registered, it may be lost upon sale or forced sale of the residence.

3.5 Right to take over a rental contract for a shared residence

In some cases, a cohabitant may have the right to take over a rental contract that is in the other cohabitant's name. The cohabitant who demands to take over the contract must have "strong reasons". In this case, the condition that the cohabitants must have reached the age of 18 also applies, as well as the condition that the cohabitation must have lasted for at least two years or that the cohabitants have, have had or are expecting children together. In addition, it must concern the cohabitants' shared residence.

The landlord cannot oppose such transfer of the lease as long as the conditions under the Husstandsfellesskapsloven are met. The landlord must be notified of the transfer.

3.6 Compensation

**Main rule:
Contribution without
re-contribution**

For cohabitation, the principle of contribution without re-contribution applies as a main rule. This means that a cohabitant as a general rule cannot demand to get back values that he or she has given to the other during the cohabitation. As a general rule, a cohabitant cannot claim any compensation for any financial profit given to the other during the cohabitation. The cohabitants can still freely make an agreement that one of them shall pay the other a compensation.

If the cohabitants do not agree that one should receive a compensation from the other, the Court may in some cases decide that one cohabitant shall pay the other a compensation. In that case, there are two conditions that must be met.

1. Financial profit

The cohabitant who demands compensation must have provided the other cohabitant with a significant financial profit. This can, for example, be done by direct cash grants or by renovation work and the like on the other person's property. The cohabitant may also have provided the other with a significant financial profit by having done more than their share of housework, including care for mutual children, or having paid more than their share of consumption expenditure.

2. Reasonableness

In addition, it must be reasonable to grant a compensation. Whether it is reasonable to grant compensation, is determined on the basis of the cohabitant's finances and the need for funds in the future, among other things. The duration of the cohabitation is also of importance.

The Court will make an individual assessment of whether compensation should be granted. It takes a lot to be granted compensation.

3.7 Debt

As well as retaining their assets in the event of a breakup, the cohabitants also retain their debt. The person who is liable for any creditors will also continue to be liable for them after a breakup. This applies regardless of what the parties agree on, for example concerning the takeover of a residence.

It is important to be aware that agreements between cohabitants on changes in debt liability do not have an effect on the creditor. You should therefore not sign a deed that transfers ownership to the other cohabitant until you have received a written declaration from the creditor that you are free from your liability as a debtor.

4.0 OTHER MATTERS

4.1 Rent when the residence is co-owned

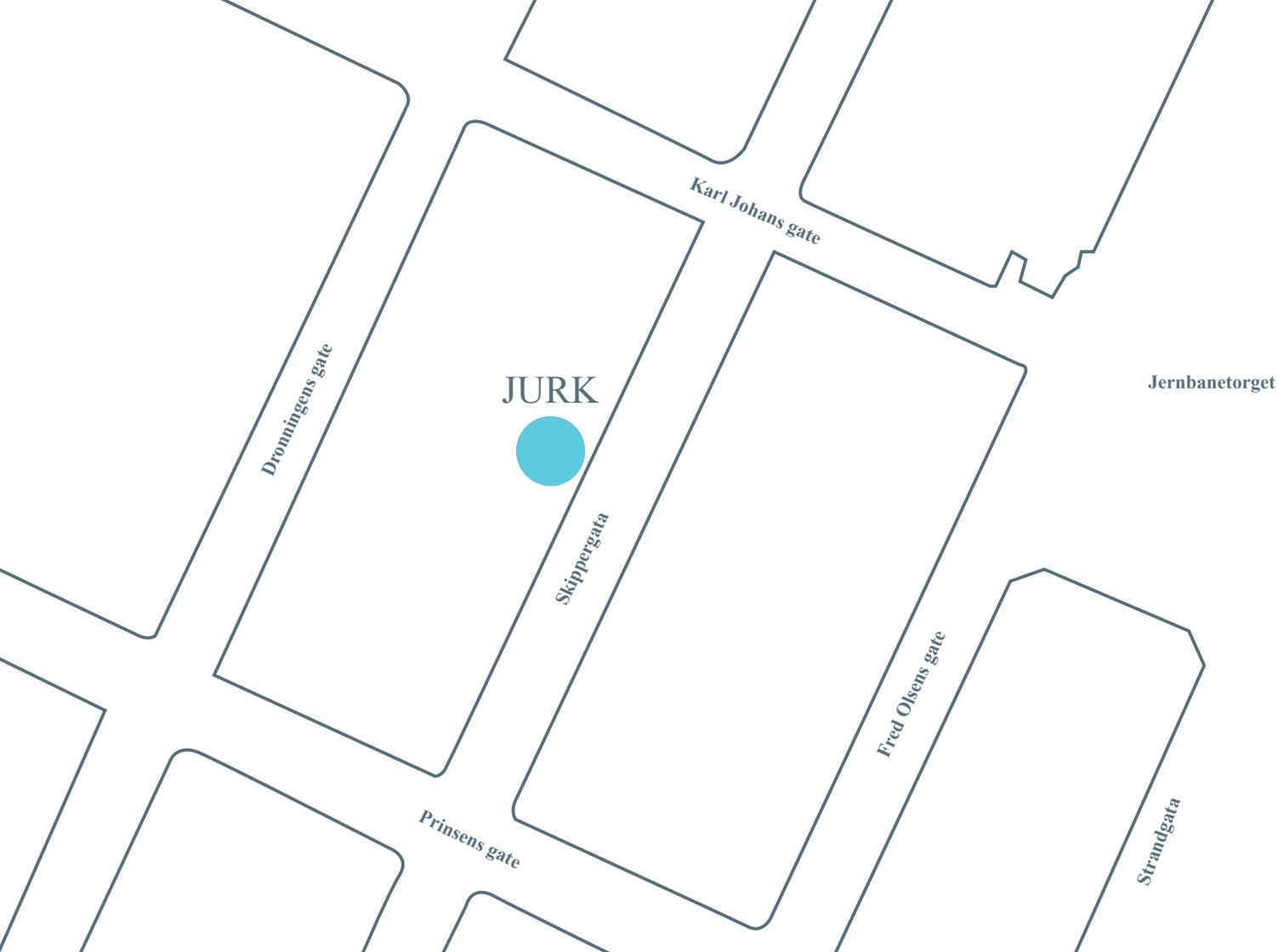
When the cohabitation ends, one of the cohabitants will usually move out of the residence that is co-owned by them. The person who moves out will normally have the right to demand rent from the cohabitant who stays.

The rent must correspond to the market rent. The cohabitant can only demand rent for his or her share of the residence from the other cohabitant. Rent runs from the time the claim for rent is made. For evidentiary reasons, JURK recommends that claims for rent are submitted in writing.

JURK remarks that the person who moves out must still cover their financial obligations concerning the residence, as long as the co-owners do not agree otherwise. This applies, for example, to mortgages and payment of necessary or fixed expenses connected to the residence.

5.0 WHO CAN YOU CONTACT FOR MORE HELP?

JURK	Skippergata 23, 0154 Oslo Phone number: 22 84 29 50 www.jurk.no
Jussbuss	Skippergata 23, 0154 Oslo Phone number: 22 84 29 00
Jussformidlingen in Bergen	Sydneshaugen 10, 5007 Bergen, Phone number: 55 58 96 00
Jusshjelpa in Nord-Norge	Terminalgata 38, 9019 Tromsø, Phone number: 77 64 45 59
The Office for Free Legal Advice in Oslo Municipality	Storgata 19, 0184 Oslo Phone number: 23 48 79 00
NAV-office (Norwegian Labour and Welfare Administration)	NAV has offices in all municipalities in Norway. Phone number: 55 55 33 33
The Courts	If you want information about any legal proceedings, you can look at the website www.domstol.no .
Attorney	If you need help from an attorney, you can find a list of local attorneys working on family law on the website www.advokatenhjelperdeg.no .



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